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Minneapolis MN 55402-1498

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**SEP 23 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
KIRKLAND et al.	:	DECISION
Application No. 10/694,918	:	ON PETITION
Filed: October 28, 2003	:	
Attorney Docket No. 11047.03	:	

This is a decision on a renewed petition under 37 CFR 1.137(b), filed August 2, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to a non-final office action mailed May 17, 2004, which set a period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 18, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition does not satisfy requirement (1). While the Application Data Sheet filed with the Preliminary Amendment dated October 28, 2003 includes correspondence information to be addressed to Scott D. Rothenberger, this individual has not been appointed an attorney of record. As such, there is still no indication that the person signing the Terminal Disclaimer

Responsive to a Double Patenting Rejection was given power attorney to prosecute the above-identified application. See 37 CFR 1.321(c)(2). Presently, the following practitioners are of record: Mark Z. Dudley, Frank R. Perillo, and Patrick J. Barrett.

Additionally, the Change of Correspondence Address must be made by parties identified in 37 CFR 1.33(a)(2), which excludes registered attorneys not of record who act in a representative capacity under the provisions of 37 CFR 1.34. See 37 CFR 1.33(a)(2) and (b)(2). As such, the correspondence address has not been changed.

The petition fee of \$1500 was paid with the original petition filed on January 27, 2005 under 37 CFR 1.137(b). A duplicate payment for the petition fee in this renewed petition under 37 CFR 1.137(b) was unnecessary and will be refunded to petitioner's deposit account. In addition, the duplicate payment of \$130 for the terminal disclaimer was unnecessary and will be refunded.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITION  
                                    Commissioner for Patents  
                                    P. O. Box 1450  
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By hand:                     U. S. Patent and Trademark Office  
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                                    401 Dulany Street  
                                    Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

A handwritten signature in black ink, appearing to read "Brian Hearn", with a long horizontal flourish extending to the right.

Brian Hearn  
Petitions Examiner  
Office of Petitions